

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Kwiky Mini Mart 7,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0211814

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), that a permanent disqualification of Kwiky Mini Mart 7 (hereinafter Appellant) from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP), was properly imposed by FNS' Retailer Operations Division (hereinafter Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c), and (e)(1) in its administration of SNAP, when it assessed a permanent disqualification against the Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7, may file a written request for review of the administrative action with FNS.

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data from April 2018 through August 2018. This involved the following SNAP transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households (HHs) within a set time period; and
- There were excessively large purchase transactions made from recipient accounts.

CASE CHRONOLOGY

The Agency's record shows that FNS initially authorized the Appellant for SNAP participation as a convenience store on August 3, 2015. In a letter dated October 4, 2018, Retailer Operations charged the Appellant with trafficking, as defined in § 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2018 through August 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

On October 10, 2018, one of the Appellant's owners contacted Retailer Operations by telephone asking for an explanation of the Charge letter. The owner denied the charges after Retailer Operations explained the Charge letter. Retailer Operations recommended a written reply with invoices/receipts that would be reviewed.

In a letter dated October 15, 2018, the Appellant's responding owner replied to the Charge letter, stating that the unusual transaction patterns were not due to trafficking, but rather due to multiple members of a SNAP household (HH) or authorized, non-household (HH) member shopping on their behalf using the same EBT card. The fact that 25 HHs used their EBT card more than once a day at his store, over a 5-month period, is in no way evidence of trafficking. His store is within walking distance to low-income housing, a casino, and is open 24-hours, which is not something the local grocery stores offer in this area of town. Many customers shop multiple times a day to buy basic necessities, may make several trips if they have to carry heavy items back to their homes, and many customers choose to buy their food necessities from his store as opposed to the casino.

The owner is unaware what SNAP considers to be "excessively large", regarding excessively large charges **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Some items sold in the store include coffee (\$6.99); 12-pack of soda (\$5.99); case of bottled water (\$5.99); box of cereal (\$5.99), gallon of milk (\$3.99), and pack of cookies (\$4.99). The owner does not understand how these charges are considered unreasonable, especially for people buying multiple cases of water and soda to last the month.

Finally, the owner stated that the store cash register does not itemize food purchases. The owner is willing to adjust its current practice by hand writing individual EBT purchases, and attaching them to the register receipts, if this would be useful to USDA. Allegations are taken seriously and a lot of time has been spent ensuring that the store is in compliance with SNAP regulations. The owner is willing to provide additional information to assist in the investigation, including sworn affidavits from some of the EBT customers. The owner asked that USDA please reconsider the finding of trafficking. The owner did not provide any invoices/receipts, affidavits

from its EBT customers, or any supporting documentation in support of its reply. A request for a trafficking CMP was not requested.

After analyzing the explanations and documentation provided by the Appellant and further considering the evidence in the case, Retailer Operations concluded that trafficking had occurred as charged and issued a Determination letter dated November 2, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that Retailer Operations considered the Appellant's eligibility for a trafficking CMP according to the terms of § 278.6(i) of the SNAP regulations, but a CMP was not appropriate because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter dated November 13, 2018, the Appellant appealed Retailer Operations' determination by requesting an administrative review. The request was granted by letter dated November 20, 2018.

STANDARD OF REVIEW

In appeals of adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and implemented through regulation under 7 CFR § 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site

investigations, inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification

in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

APPELLANT'S CONTENTIONS

The following represents a summary of the Appellant's contentions in this matter; however, in reaching a decision, full consideration was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document:

- My store is open 24 hours and located within walking distance to low-income housing and a casino. Many households come to my store by foot, multiple times during the day, to buy basic necessities. Some customers have to carry heavy items to their homes, including bottled water and soda, and need to make multiple trips. The casino customers choose to buy their food from my store as opposed to the casino.
- My current cash register does not allow me to itemize food items being purchased. I am willing to adjust my current practice to begin writing down the individual items that are purchased with an EBT card on a handwritten receipt, and then attaching it to the receipt printed from the register, in order to reflect the exact items purchased. I could submit this documentation to USDA to ensure compliance.
- I am purchasing a cash register that will allow me to electronically scan and itemize food items being purchased, in order to satisfy SNAP regulations and help ensure compliance can be monitored by USDA.
- I provided additional training to my employees regarding SNAP regulations, showed the SNAP training guide and video to my employees again, and provided refresher training, even though this was done earlier in 2018.
- Please reconsider your findings of trafficking. My store is in a low-income area of Las Vegas, I have taken active steps to ensure the compliance of my store, no violations ever occurred at my store, and I am willing to do whatever is asked of me by USDA to ensure compliance, even if it means being on a probationary period.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not Retailer Operations adequately established that the Appellant engaged in the violation of trafficking. In other words, did Retailer Operations, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, Retailer Operations considered not only the Appellant's EBT transactions, but also information obtained during an August 9, 2018, store visit conducted by an FNS contractor to observe the nature and scope of the Appellant's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the Appellant's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Small convenience store, approximately 900 square feet in size, open 24-hours, operating in the city of Las Vegas, Nevada.
- Extra storage by checkout area is about 10 square feet.
- One cash register, one EBT point-of-sale device, no optical scanners, two shopping baskets marked 99 Cent Store, and no shopping carts.
- Four most expensive food items: 4-pack cans of Red Bull priced at \$7.99, 7-ounce jar of Nescafe instant coffee priced at \$6.99, 24-pack of 16.9-ounce bottles of Nestle Pure Life water priced at \$5.99, and 12-pack of 12-ounce cans of soda priced at \$5.99.
- Dairy staple food stock is insufficient for program eligibility, only carrying cow's milk. Owner said he carries margarine and cheese, but was out of stock.
- Ineligible items included tobacco products, automobile products, health and beauty aids paper goods, cleaning products, and pet items.
- Not selling primarily one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables.
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.
- No special pricing structure, such as prices ending in \$x.x9, \$x.50, and/or \$x.00.
- ATM or money transfer service.
- Store has one light bank out which caused some dark spots.
- Broken refrigerator used to store ramen and cereal.
- Six gaming seats are on-site.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit the Appellant to purchase large quantities of

groceries, especially considering the limited space, limited produce, limited dairy, no fresh meat, minimal amount of staple food, the absence of shopping carts, and the availability of substantially larger SNAP-authorized stores in the area, including one medium grocery, one large grocery, and four super stores within a mile of the Appellant. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant's SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 25 sets of transactions (78 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short periods of time to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, and structure.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This same household frequently shops at larger super markets and super stores in close proximity to the Appellant. Such repetitive transaction sets and dollar amounts at a convenience store like the Appellant are highly irregular and are often an indication of trafficking.

The Appellant contends that the majority of its customers walk to the store from their nearby homes, making multiple visits, in order to buy basic necessities and carry heavy items. However, this explanation makes little sense. While the transactions were close enough together to cause FNS to question their legitimacy, the vast majority of the transactions in Attachment 1 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which does not support a claim of customers purchasing heavy items, walking home, and having time to return to the store for multiple trips.

It should be made clear that SNAP regulations do not provide limitations on the number of transactions that can be made by SNAP households or how large the individual transactions can be. However, the transactions noted in the Charge letter are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics and in comparison with similar stores in the area. It should be further noted that the transactions identified in the Charge letter are not marginally abnormal, but decidedly so. This review does not contend that the EBT transactions detailed in the Charge letter are overtly suspicious when they occur on an occasional or intermittent basis. However, when such transactions form repetitive and questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Finally, the Appellant has offered no compelling evidence, such as itemized cash register receipts, to prove that the questionable transactions were legitimate purchases of eligible food. No SNAP recipient affidavits to attest to shopping behaviors of flagged households at the

Appellant were provided. Anecdotal explanations, without persuasive supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate. Therefore, it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 177 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchase in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as the Appellant to have purchases like those included in this Attachment to the Charge Letter.

The Appellant contends the amounts provided in the Charge letter, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, are excessively large charges. The Appellant does not find these amounts to be unreasonable given he sells many items ranging from \$3.99-\$6.99 such as coffee, soda, bottled water, cereal, milk, and cookies, especially when customers buy multiple cases of water and soda to last them through the month.

The FNS store visit report and photos of August 9, 2018, show that the Appellant offers a moderate stock of SNAP eligible foods, with limited produce, no fresh meat, and lacks the minimum variety and amount of stock in the dairy staple food category. The store visit report documents that the owner stated he carries margarine and cheese, but was currently out of stock.

The store visit report and photos also indicate that there was a broken refrigerator being used for storage, a light bank out causing poor lighting, limited checkout counter space covered by various snack food items, no shopping carts, and limited hand-held baskets in which to transport a large number of or heavy items required to make up these large transaction amounts. Without a sufficient number of baskets and limited checkout counter space, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The store visit report and photos also indicate there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized

competitors. These large transaction amounts are also not consistent with the Appellant's inventory.

The average SNAP transaction included in this Attachment **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The large transactions documented in this Attachment are not consistent with a convenience store in Clark County, Nevada. During the review period, the average transaction amount for a convenience store in Clark County was \$6.26. The average transaction in this Attachment is more than five (5) times larger than the average purchase amount for this store type. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors.

While the Appellant may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The Appellant shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the Appellant, it would be expected that similar patterns would also present themselves at nearby stores as well. This is simply not the case.

There are 15 SNAP authorized retailers, including 4 super stores, 1 large grocery store, 1 medium grocery store, and 9 convenience stores located within a 1.0 mile radius of the Appellant that can meet the nutritional needs of SNAP customers. While the Appellant may be open 24 hours, they are not the only retailer in the immediate area that is open 24 hours a day. There is a 24-hour convenience store located 0.24 miles from the Appellant and a 24-hour grocery store located 0.57 miles from the Appellant. Some of these authorized SNAP stores are larger than the Appellant and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The records shows that Retailer Operations compared the SNAP transaction activity of the Appellant to the store type average for convenience stores in Nevada. During the review period, the Appellant's average transaction dollar amount was considerably higher than the store type average for convenience stores in the State.

Retailer Operations also compared the SNAP transaction activity of the Appellant to that of the three closest SNAP authorized convenience stores that did not have an open or pending compliance case and that had SNAP redemptions in all six months of the review period. These three comparison convenience stores are located within 0.57 miles of the subject firm and sell a comparable or larger variety of staple food items at comparable or better prices as compared to the Appellant. The comparison indicates that the Appellant's average transaction dollar amount was considerably higher as compared to the noted area convenience stores. In addition, the Appellant conducted a higher number of multiple transactions made from individual SNAP household accounts within a set time period, and excessively large purchase transactions as compared to the noted area convenience stores. These are indicators that trafficking is more likely than not occurring at the Appellant.

Lastly, the case record documents that Retailer Operations conducted a detailed analysis of three SNAP households listed in this Attachment to analyze their shopping patterns at the Appellant

compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets located nearby and at several miles distance from the Appellant's location. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at the Appellant often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. While the Appellant does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in close proximity to the Appellant offering a greater quantity and variety of products, including meats/seafood, dairy, and produce, at lower prices. It is highly unlikely that a convenience store with moderate staple foods, limited space, limited dairy, limited produce, and no fresh meat would have legitimate SNAP transactions greater than these larger and better stocked stores.

The burden to disprove trafficking rests with the Appellant. In this matter, insufficient evidence was advanced to support the contentions. No itemized cash register receipts were provided. No vendor invoices to document eligible items sufficient to cover the Appellant's SNAP redemptions were provided. No customer statements were provided to explain the shopping behaviors of flagged households at the Appellant. No Federal or State business tax submissions were advanced. No business banking records were provided.

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

This review does not doubt that the Appellant sells eligible food items and conducts some legitimate SNAP business. However, when SNAP transactions form patterns that are substantially different from similar-sized and similarly-stocked stores in the area, persuasive evidence from the Appellant is necessary to demonstrate that there is not something more, such as trafficking, taking place. In an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant has not met this standard.

It is the finding of this review that the attachments furnished with the Charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The Appellant's contentions and evidence do not persuade this review otherwise.

Corrective Action

The owner contends that the current cash register does not allow for itemization of food purchases. The owner offers to adjust his current practice by writing down individual EBT purchases and attaching that to the cash register receipt. The owner states he is purchasing a cash register that will allow him to electronically scan and itemize food purchases in order to satisfy SNAP regulations and to help ensure compliance can be monitored by USDA.

The owner also contends that he has provided additional training to his employees regarding SNAP regulations, showed the SNAP training guide and video to his employees again, and provided refresher training, even though this was done earlier in 2018.

The owner asks USDA to reconsider findings of trafficking. His store is in a low-income area of Las Vegas, he has taken active steps to ensure compliance of his store, no violations ever occurred at his store, and he is willing to do whatever is asked by USDA to ensure compliance, even if it means serving a probationary period.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of Retailer Operations. This review is limited to what circumstances were at the basis of Retailer Operations' action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the Appellant may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the owner's contentions that he has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

As noted earlier, Retailer Operations determined that the Appellant was not eligible for a CMP in lieu of permanent disqualification for trafficking, because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it replied to the Charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a CMP in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by Retailer Operations to permanently disqualify the Appellant from SNAP participation. This data provided substantial evidence for this review to conclude that the questionable transactions listed in the Charge letter had characteristics that are consistent with trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be modified or reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to the Regulations at 7 CFR § 279.7 with respect to applicable rights to judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within 30 days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

KIM DAMERON
Administrative Review Officer

January 28, 2020